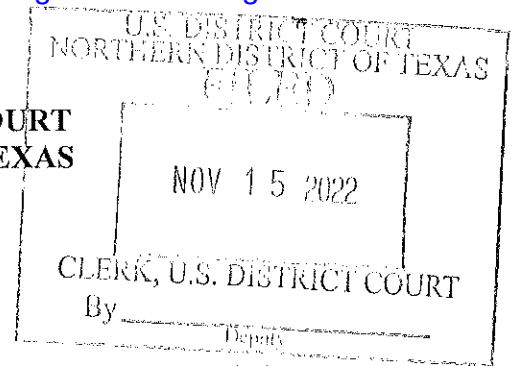


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



KRISTI RUTH APPLEWHITE,
Plaintiff,

VS.

BARRY SAWYER, et al.,
Defendants.

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CIVIL NO. 4:21-CV-985-P-BJ

**ORDER RECOMMENDING DISMISSAL
OF CLAIMS AGAINST DEFENDANT ERIN ROSKO**

The above-styled and numbered cause of action was filed on August 19, 2021, by *pro se* Plaintiff Kristi Ruth Applewhite (“Applewhite”). Applewhite was granted permission to proceed *in forma pauperis* and the United States Marshal was directed to serve all listed Defendants. For valid reasons, summons for Defendant Erin Rosko (“Rosko”) and four other Defendants were returned as undelivered in February 2022.¹ On June 7, 2022, the Court ordered Applewhite to file, no later than June 21, 2022, an instrument in affidavit form providing the United States Marshal with proper location for service of Rosko and other listed Defendants. Applewhite timely filed a document, though not in the requisite affidavit form, providing updated addresses where Rosko and the other listed Defendants may be served [doc. 68]. On June 23, 2022, the Court issued an Order [doc. 87], *inter alia*, directing the Marshal to serve summonses on Rosko and the other listed Defendants at their updated addresses.

As of the date of these findings, the Marshals have been unable to serve Rosko at the address provided by Applewhite. Consequently, the Court **RECOMMENDS** that claims against

¹ Summons for Rosko was initially returned as not executed on February 10 and 22, 2022 [docs. 33-4] and again, after Applewhite provided Rosko’s updated address, on July 20, 2022 [doc. 94].

Rosko in the above-styled and numbered cause be **DISMISSED** pursuant to Federal Rule of Civil Procedure 4(m).²

**NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a *de novo* determination of those portions of the United States Magistrate Judge's proposed findings, conclusions and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(b)(1). Failure to file, by the date stated above, a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending time to file objections from ten to fourteen days).

ORDER

Under 28 U.S.C. § 636, it is hereby **ORDERED** that each party is granted **until December 7, 2022** to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation. It is further **ORDERED** that if objections are filed

² "If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m).

and the opposing party chooses to file a response, the response shall be filed within seven (7) days of the filing date of the objections.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and hereby is returned to the docket of the United States District Judge.

SIGNED November 15, 2022.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE